

## COMMISSION ON STATE MANDATES

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May 18, 2007

TO: All Interested Persons

FROM: Paula Higashi, Executive Director

SUBJECT: New Regulations

On March 29, 2007, the Commission on State Mandates (Commission) adopted the regulatory action to implement Assembly Bill 2652 (Stats. 2006, ch. 168), which reforms the Commission's incorrect reduction claims process. The Commission amended and renumbered sections 1185, 1185.01, 1185.02, 1185.03, and 1185.1; and added sections 1185.2, 1185.3, and 1185.4 of the California Code of Regulations, title 2, chapter 2.5, division 2.

Enclosed are the new and amended sections of the Commission's regulations, which are effective on May 8, 2007.

If you have any questions, please call Cathy Cruz Jefferson at (916) 323-8218.

Enclosure

Effective: May 8, 2007

CALIFORNIA CODE OF REGULATIONS  
TITLE 2. ADMINISTRATION  
DIVISION 2. FINANCIAL OPERATIONS  
CHAPTER 2.5. COMMISSION ON STATE MANDATES

**Article 5. Incorrect Reduction Claims**

**§ 1185. Incorrect Reduction Claim Filing**

(a) To obtain a determination that the Office of State Controller incorrectly reduced a reimbursement claim, a claimant shall file an "incorrect reduction claim" with the commission.

(b) All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.

(c) An incorrect reduction claim shall pertain to alleged incorrect reductions in a reimbursement claim(s) filed by one claimant. The incorrect reduction claim may be for more than one fiscal year.

(d) All incorrect reduction claims, or amendments thereto, shall be filed on a form provided by the commission.

(e) All incorrect reduction claims, or amendments thereto, shall contain at least the following elements and documents:

(1) A copy of the Office of State Controller's claiming instructions that were in effect during the fiscal year(s) of the reimbursement claim(s).

(2) A written detailed narrative that describes the alleged incorrect reduction(s). The narrative shall include a comprehensive description of the reduced or disallowed area(s) of cost(s).

(3) If the narrative describing the alleged incorrect reduction(s) involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by testimonial or documentary evidence and shall be submitted with the claim. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

(4) A copy of any final state audit report, letter, remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.

(5) A copy of the subject reimbursement claims the claimant submitted to the Office of State Controller.

(6) An incorrect reduction claim, or amendment thereto, shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the incorrect reduction claim is true and complete to the best of the declarant's personal knowledge or information or belief. The date signed, the declarant's title, address, telephone number, and, if available, electronic mail address and facsimile number, shall be included.

(7) The claimant shall file one original incorrect reduction claim, or amendment thereto, and accompanying documents with the commission. The original shall be unbound and single-sided, without tabs, and include a table of contents.

(8) The claimant shall also file two (2) copies of the incorrect reduction claim, or amendment thereto, and accompanying documents with the commission. The copies may be two-sided and shall not include tabs.

(f) Within ten (10) days of receipt of an incorrect reduction claim, commission staff shall notify the claimant if the incorrect reduction claim is complete or incomplete. Incorrect reduction claims will be considered incomplete if any of the elements required in subsections (c) through (e) of this section are illegible or not included. Incomplete incorrect reduction claims shall be returned to the claimant. If a complete incorrect reduction claim is not received by the commission within thirty (30) days from the date the incomplete claim was returned to the claimant, the commission shall deem the filing to be withdrawn.

Note: Authority cited: Section 17527(g), Government Code. Reference: Sections 17551(d) and 17553(d), Government Code.

#### **§ 1185.1. Review of Incorrect Reduction Claims.**

(a) Within ten (10) days of receipt of a complete incorrect reduction claim, commission staff shall provide a copy of the claim to the Office of State Controller.

(b) Commission staff shall notify the Office of State Controller that written oppositions or recommendations and supporting documentation in connection with an incorrect reduction claim shall be filed no more than ninety (90) days from the date the copy of the claim is provided to the Office of State Controller. The Office of State Controller shall simultaneously serve a copy of any opposition or recommendation regarding the claim on the claimant and their designated representative or, if a mailing list is provided by the commission, a copy of any opposition or recommendation on the claim, must be filed on all parties and interested parties on the mailing list. Proof of service must be filed with the oppositions or recommendations and supporting documentation pursuant to section 1181.2. If the oppositions or recommendations regarding an incorrect reduction claim involve more than the discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the response. All documentary evidence must be authenticated by declarations under penalty of perjury signed by

persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

(c) The claimant and interested parties may submit written rebuttals to the Office of State Controller's comments. Written rebuttals shall be filed with the commission within thirty (30) days of service of the Office of State Controller's comments. The claimant shall simultaneously serve a copy of the written rebuttal on the Office of State Controller or, if a mailing list is provided by the commission, a copy of the rebuttal, must be served on all parties and interested parties on the mailing list. Proof of service shall be filed with the written rebuttal and supporting documentation pursuant to section 1181.2. If the written rebuttal involves more than discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the rebuttal. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

Note: Authority cited: Section 17527(g), Government Code. Reference: Sections 17551(d) and 17553(d), Government Code.

**§ 1185.2. Consolidation of Claims Initiated by an Individual Claimant; Intent to Join a Consolidated Claim.**

(a) On behalf of a class of claimants, an individual claimant may initiate the consolidation of claims alleging an incorrect reduction as described in Government Code section 17558.7, if all of the following apply:

(1) The method, act, or practice that the claimant alleges led to the reduction has led to similar reductions of other parties' claims, and all of the claims involve common questions of law or fact.

(2) The common questions of law or fact among the claims predominate over any matter affecting only an individual claim.

(3) The consolidation of similar claims by individual claimants would result in consistent decisionmaking by the commission.

(4) The claimant filing the consolidated claim would fairly and adequately protect the interests of the other claimants.

(b) A claimant that seeks to file a consolidated incorrect reduction claim shall notify the commission of its intent at the time of filing on a form provided by the commission.

(c) Within ten (10) days of receipt of a consolidated incorrect reduction claim, commission staff shall notify the claimant if the consolidated incorrect reduction claim is complete or incomplete pursuant to section 1185, and request the Office of the State Controller to provide the commission, within thirty (30) days, a list of claimants for whom the Controller has reduced

similar claims under the same mandate, and the date each claimant was notified of an adjustment.

(d) Upon receipt of the list from the Office of the State Controller, the commission shall notify the list of other claimants experiencing similar reductions by the Controller under the same mandate and other interested parties of the original claimant's intent to consolidate an incorrect reduction claim.

(e) Within thirty (30) days of receipt of the commission's notice regarding the original claimant's intent to consolidate an incorrect reduction claim, any other eligible claimant may, on a form provided by the commission, file a notice of intent to join the consolidated incorrect reduction claim.

(f) All notices of intent to join a consolidated incorrect reduction claim shall comply with section 1185(b) and contain at least the following elements and documents:

(1) A copy of the final state audit report, letter, remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.

(2) A copy of the subject reimbursement claims submitted to the Office of State Controller.

(3) A notice of intent to join a consolidated incorrect reduction claim shall include a certification by the joint-claimant authorizing the original claimant to act as its representative in the consolidated incorrect reduction claim, and a declaration under penalty of perjury that the filing is true and complete to the best of the declarant's personal knowledge or information or belief. The date signed, the declarant's title, address, telephone number, and, if available, electronic mail address and facsimile number, shall be included.

(4) The joint-claimant shall file one original notice of intent to join and accompanying documents with the commission. The original shall be unbound and single-sided, without tabs.

(5) The joint-claimant shall also file two (2) copies of the notice of intent to join and accompanying documents with the commission. The copies may be two-sided and shall not include tabs.

(g) Within ten (10) days of receipt of a notice of intent to join a consolidated incorrect reduction claim, commission staff shall notify the joint-claimant if the notice of intent to join is complete or incomplete. Notices of intent to join a consolidated incorrect reduction claim will be considered incomplete if any of the elements required in subsection (f) of this section are illegible or not included. Incomplete notices of intent shall be returned to the joint-claimant. If a complete notice of intent to join a consolidated incorrect reduction claim is not received by the commission within thirty (30) days from the date the incomplete notice of intent was returned to the joint-claimant, the commission shall deem the filing to be withdrawn.

Note: Authority cited: Sections 17527(g) and 17558.7(g), Government Code. Reference: Section 17558.7, Government Code.

### **§ 1185.3 Opting Out of a Consolidated Incorrect Reduction Claim.**

Pursuant to Government Code section 17558.7(f), each claimant that files an intent to join a consolidated incorrect reduction claim may opt out and not be bound by any determination made on the consolidated claim.

(a) To opt out of a consolidated incorrect reduction claim, claimants shall file a written notice with the commission within fifteen (15) days of service of the Office of State Controller's comments. A copy of the notice must be served on all parties and interested parties on the mailing list. Proof of service shall be filed with the notice pursuant to section 1181.2.

(1) No later than one (1) year after opting out, or within the statute of limitations under section 1185(b), whichever is later, a claimant that opts out of a consolidated claim shall file an individual incorrect reduction claim pursuant to commission requirements in order to preserve its right to challenge a reduction made by the Controller on that same mandate.

(2) If a claimant opts out of a consolidated incorrect reduction claim and an individual incorrect reduction claim for that entity is already on file with the commission, the individual filing is automatically reinstated.

Note: Authority cited: Sections 17527(g) and 17558.7(g), Government Code. Reference: Section 17558.7, Government Code.

### **§ 1185.4. Executive Director's Authority to Consolidate Incorrect Reduction Claims.**

(a) The executive director may consolidate part or all of any incorrect reduction claim with another incorrect reduction claim, if necessary to ensure the complete, fair, or timely consideration of any incorrect reduction claim.

(1) At least thirty (30) days before the action is taken, the executive director shall simultaneously serve on the parties and interested parties on the mailing list described in section 1181.2 of these regulations a notice of any proposed action to consolidate.

(2) During the thirty (30) day notice period, a claimant may serve and file a written request that an individual incorrect reduction claim be severed from the proposed consolidation. Timely requests to sever shall be approved by the executive director.

(3) Late requests for severing an individual incorrect reduction claim shall be denied. Any party may appeal to the commission for review of the actions and decisions of the executive director under this section pursuant to section 1181 of these regulations.

Note: Authority cited: Sections 17527(g) and 17558.8(b), Government Code. Reference: Sections 17530, 17554, and 17558.8, Government Code.

**§ 1185.5. Review of Completed Incorrect Reduction Claims and Preparation of Staff Analysis.**

(a) Before hearing an individual or consolidated incorrect reduction claim, commission staff shall prepare a written analysis of the incorrect reduction claim that shall include, but not be limited to, a review of any statements filed by the Office of State Controller and the claimant's rebuttal. The analysis shall also include a staff recommendation on whether the claimant's reimbursement claim was incorrectly reduced.

(b) At least eight (8) weeks before the hearing or at such other time as required by the executive director or stipulated to by the claimant and the Office of State Controller, commission staff shall distribute a draft staff analysis to the Office of State Controller and the claimant and their designated representative, or, if a mailing list is provided by the commission, a copy shall be distributed to all parties and interested parties on the mailing list.

(c) The Office of State Controller and the claimant may file written comments on the draft staff analysis with the commission. Written comments shall be filed with the commission at least five (5) weeks before the hearing or as otherwise stipulated to by the parties or determined and publicized by the executive director. If a mailing list is provided by the commission, a copy of the comments must be served on all parties and interested parties on the mailing list. Written comments shall be reviewed by staff and may be incorporated into the final staff analysis presented to the commission.

Note: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(d), Government Code.

**§ 1185.6. Withdrawal of Incorrect Reduction Claims.**

An incorrect reduction claim may be withdrawn by written application any time before a decision is adopted or by oral application at the time of hearing. If such application is made the commission may issue a decision dismissing the claim.

Note: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(d), Government Code.

**§ 1185.7. Reinstatement of Costs.**

If the commission determines that a reimbursement claim was incorrectly reduced, the commission shall send the statement of decision to the Office of State Controller and request that the Office of State Controller reinstate the costs that were incorrectly reduced.

Note: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(d), Government Code.